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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:



Office: PHOENIX, AZ

Date:

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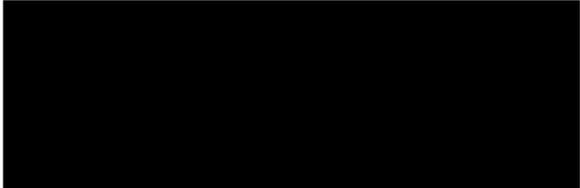
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of a lawful permanent resident of the United States and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her mother and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 24, 2007.

On appeal, the applicant, through counsel, asserts that the Field Office Director “failed to give weight to the evidence of extreme hardship.” *Form I-290B*, filed September 21, 2007.

The record includes, but is not limited to, counsel’s appeal brief, affidavits from the applicant and her mother, letters from the applicant’s children, letters of support, medical documentation for the applicant’s mother, a letter regarding the applicant’s mother’s mental health, wage and tax documents, public housing lease documents, the applicant’s conviction records, and country conditions information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record indicates that on August 23, 1991, the Petition for Alien Relative (Form I-130) filed on the applicant's behalf by her mother was approved. On an unknown date before July 17, 1993, the applicant entered the United States without inspection.¹ On an unknown date after April 25, 1995², the applicant departed the United States. On June 26, 1995, the applicant attempted to enter the United States by presenting another individual's Resident Alien Card (Form I-551) and was denied admission. On an unknown date, the applicant entered the United States without inspection. On May 3, 1996, the applicant filed an Application for Voluntary Departure under the Family Unity Program (Form I-817). On June 7, 1996, the applicant's Form I-817 was approved. On July 24, 1998, the applicant filed another Form I-817. On February 4, 1999, the applicant's second Form I-817 was approved. On January 3, 2002, the applicant filed another Form I-817. On August 25, 1999, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 15, 2002, the California Service Center issued motions to reopen/intent to terminate the applicant's Form I-817s, filed on May 3, 1996 and July 24, 1998. On the same day, the Service filed a notice of intent to deny the applicant's third Form I-817. On February 11, 2003, the applicant was convicted of criminal damage per domestic violence, and was sentenced to one (1) year probation and 30 days in jail, with 28 days suspended. The applicant was also ordered to pay restitution.³ On June 14, 2004, the applicant's third Form I-817 was administratively closed. On June 14, 2007, the applicant filed a Form I-601. On June 20, 2007, the applicant's Form I-485 was denied. On August 24, 2007, the Service reopened the applicant's Form I-485. On the same day, the Field Office Director denied the applicant's Form I-601, finding the applicant had attempted to enter the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of another person's resident alien card in an attempt to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences as a result of her inadmissibility is not directly relevant to a determination of extreme hardship in a section 212(i) waiver

¹ The applicant's son, [REDACTED], was born on July 17, 1993 in California.

² The applicant's son, [REDACTED] was born on April 25, 1995 in Arizona.

³ The AAO does not find it necessary to consider whether the applicant has been convicted of a crime involving moral turpitude and, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. In that the maximum sentence of imprisonment for the applicant's offense was less than one year of confinement and the applicant was not sentenced to more than six months in jail, her conviction is amenable to the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act. Accordingly, her conviction would not bar her admission to the United States even if it were to be determined that criminal damage per domestic violence was a crime involving moral turpitude.

proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children would suffer if she were to be denied admission to the United States. Section 212(i) of the Act provides a waiver solely where an applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children will not be considered in this proceeding except to the extent that it creates hardship for the qualifying relative, their grandmother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not...fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has also held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be

expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); see also *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to the applicant’s mother must be established whether she resides in Mexico or the United States, as she is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider all relevant factors in the adjudication of this case.

In a brief dated October 16, 2007, counsel states that “conditions in Mexico are terrible in contrast to the conditions in the United States for the average person. Mexico has a corrupt legal and governmental system Wealth in Mexico is in the hands of a tiny minority The limited economic opportunities are in the hands of the small minority of the Mexican population.” The AAO notes that counsel has submitted various articles and reports on Mexico that provide a general overview of economic and human rights conditions there. However, these materials do not establish that the applicant’s mother would be unable to obtain employment in Mexico and the record does not demonstrate that the applicant’s mother has no transferable skills that would aid her in obtaining a job in Mexico. The AAO acknowledges that the applicant’s mother has resided in the United States for many years and would experience hardship upon relocation. However, it also notes that she is a native of Mexico who spent her formative years in Mexico and that her mother continues to reside in Mexico. *Form G-325A, Biographic Information, for the applicant’s mother*, dated February 1, 2007.

Counsel also states that the applicant’s mother “could not receive the care she needs [in Mexico] [and] [s]he has not contributed to any medial or pension programs in Mexico and would be totally cut off from access to such assistance.” The AAO finds the record to establish that the applicant’s mother has been treated for generalized weakness, abdominal pain, hyperlipidemia and anxiety, and that she is on medication for her anxiety and hyperlipidemia. It also notes that an October 11, 2007 letter from [REDACTED] reports that the applicant’s mother “is participating in mental health services...due to depressive and anxiety symptoms.” The AAO notes this information but does not find the record to indicate the severity of the applicant’s mother’s physical conditions, what treatment, beyond medication, she requires or how her physical conditions affect her ability to function. Moreover, although the record indicates that the applicant’s mother is participating in mental health services, it does not contain a diagnosis of the applicant’s mother’s mental health conditions by a licensed mental health professional or indicate the severity of these conditions. The record also fails to indicate that the applicant’s mother must remain in the United States to receive treatment and the country conditions materials submitted by the applicant do not offer evidence that the applicant’s mother would be precluded from receiving adequate care in Mexico for her medical conditions, physical and/or mental.

The AAO notes that, on March 14, 2010, the Department of State issued a travel warning to United States citizens thinking of traveling to northern Mexico, specifically the area along the United States-Mexico border. While the AAO acknowledges the rise in violence and criminal activity in northern Mexico, it

does not find the record to indicate that the applicant's mother would be relocating to this area of Mexico. It notes that the record indicates that the applicant's mother was born in the southern state of Michoacan and that her own mother still resides there. Therefore, the AAO does not find the record to establish that the applicant's mother would be at risk if she returned with her daughter to Mexico.

The applicant's mother states that her grandchildren "could never have the same educational opportunities or health care in Mexico as here in the United States." The applicant states that she wants her children "to have a good education and never create problems for [anyone]." The AAO acknowledges these statements, but again notes that hardship to the applicant's children is not directly relevant to a determination of extreme hardship in section 212(i) proceedings and the record fails to establish how any hardship that they might encounter upon relocating to Mexico would affect their grandmother, the only qualifying relative in this matter. Based on the record before it, the AAO finds that the applicant has failed to establish that her mother would suffer extreme hardship if she relocated to Mexico.

The record also fails to establish extreme hardship to the applicant's mother if she remains in the United States, in close proximity to her other children and maintaining her employment. In an affidavit dated June 11, 2007, the applicant's mother states that she moved to the United States in 1985 in order to give her children a better life. She further states that the applicant "helps [her] immensely" with the house and taking her to her doctors' appointments, and she does not want to be separated from the applicant. Additionally, the applicant's mother claims that the applicant makes sure that she takes her medication. In an affidavit dated June 11, 2007, the applicant states that every time her mother "has a problem or feels sick [she] [is] always there for her." Counsel asserts that individuals who suffer from anxiety and depression often have difficulty staying on their medication, that older individuals often fail to take their medication and that doctors use family members to ensure compliance. The AAO notes these claims but does not find the record to establish that the applicant's mother requires any assistance from the applicant. The applicant has submitted no medical statements or other documentary evidence that demonstrate that her mother requires a caregiver or that she is that caregiver. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, as stated by the applicant's mother and counsel, the applicant's mother has five other children residing in the United States and it has not been established that they are unwilling or unable to provide assistance to their mother in the applicant's absence. The applicant's mother also states that the applicant helps her financially. The AAO notes the applicant's mother's claim of financial hardship, but does not find the record to support this claim as it contains no evidence of her income or expenses. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

The applicant's mother states that since the death of the applicant's youngest son in 2006, she and the applicant have been "in a very deep depression." The applicant states that "[t]he passing of [her] child has been very hard, [she] feel[s] that [she] will never get over it." The AAO acknowledges the applicant's and her mother's statements relating to the death of the applicant's son, but finds no documentary evidence, e.g., death certificate, that establishes his death as a hardship factor for the

applicant's mother in this proceeding. *Id.* Therefore, having reviewed the record of evidence, the AAO does not find it to demonstrate that the applicant's mother would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.